Rosman bin Haji Abdul Rashid v Rosmah Begum bte Bahadur Beg

HIGH COURT (TAIPING) — CIVIL APPEAL NO 11-10-92(91)
ABDUL MALIK ISHAK JC
1 DECEMBER 1992

Landlord and Tenant *— Recovery of possession — Notice to quit — Claim for delivery of vacant possession and for damages for trespass — Whether notice to quit bad in law — Whether there was legal tenancy between appellant and respondent — Whether respondent as tenant was estopped from denying the title of the appellant as landlord — Evidence Act 1950 s 116*

Landlord and Tenant *— Recovery of possession — Notice to quit — Expenditure of money by respondent — Whether equity would come in aid of respondent*

In 1954, the appellant built an unnumbered house ('the house') on a piece of land with the consent of the landowner. It was alleged that the appellant with his family lived in the house for 12 years until 1965 when the appellant and his family moved to Penang and the house was occupied by the appellant's in-laws, whom in 1974, invited the respondent and her family to stay temporarily in the house. The respondent's case was that, the respondent's mother, Zainab, and the appellant, shared equally in the building of the house. It was alleged that on 19 December 1955, the appellant as transferor entered into an agreement with Zainab as transferee and DW2 as purchaser. At the material time the house was subject to a warrant of attachment wherein the appellant was ordered to pay a certain Lee Hock Seng the sum of RM3,686.70 and to avoid the said warrant, both the appellant and Zainab sought the help of DW2 who settled the debt by payment of RM4,250. The said sum of RM4,250 was in the form of a loan and in return, the appellant and Zainab agreed to transfer the house to DW2 and to pay rent of RM60 per month. The rent was paid by Zainab or the respondent whereas the appellant being unemployed, never paid the rent. It was further alleged that Zainab and the respondent repaid the loan over a period of two years and in 1957, the house was surrendered to Zainab by way of an agreement.

The respondent and her family had occupied the house up to the present date and during her stay, the respondent paid the ground rent and electricity bills. On 13 April 1987, the appellant served a notice for vacant posession against the respondent. The magistrate's court dismissed the claim of the appellant against the respondent for delivery of vacant possession of the house together with damages for trespass. The appellant has appealed. The court on hearing the appeal considered two major issues:

(a) whether the notice to quit and to deliver vacant possession dated 13 April 1987 was bad in law and therefore had no effect to terminate the respondent's tenancy; and

(b) whether in the circumstances of this case the respondent's tenancy was coupled with an equity which could not be determined by a bare notice to quit and to deliver vacant possession.

Held, dismissing the appeal:

(1) There was no legal tenancy between the appellant and the respondent. Therefore there could never be any question of the continuance of tenancy as envisaged in s 116 of the Evidence Act 1950. Consequently the respondent rightly challenged the status of the appellant and the respondent could not be deemed to be estopped from denying that the title of the appellant as landlord had ended. In that event, the notice to quit was bad in law and the appellant was not entitled to evict the respondent from the house.

(2) Alternatively, payment of ground rent by the respondent was a clear indication that the respondent had a tenancy of the land upon which the house was built. There was therefore an expenditure of money by the respondent in order to prevent the house from being auctioned by Lee Hock Seng. Therefore, the respondent must be under an expectation of being allowed to stay in the house and equity would therefore come in aid of her.

Per curiam:

Where there were directly contradictory versions, the acceptance or rejection of which significantly depended on the oral testimony of the protagonists, the role of the appellate court is clear, that is, the appellate court has to accord the findings of fact of the trial court the greatest respect and ought not to disturb them unless it is satisfied that the trial court had reached a wrong decision.

[Bahasa Malaysia summary

Pada tahun 1954, perayu telah membina sebuah rumah yang tidak bernombor ('rumah itu') atas sebidang tanah dengan persetujuan pemilik tanah itu. Telah dihujah bahawa perayu dan keluarganya tinggal di rumah itu untuk 12 tahun sehingga 1965 apabila perayu dan keluarganya pindah ke Pulau Pinang dan rumah itu didiami oleh ipar lamai perayu dan mereka pada tahun 1974, telah menjemput penentang dan keluarganya untuk tinggal sementara di rumah itu. Kes penentang adalah bahawa, ibu penentang, Zainab, dan perayu, berkongsi sama rata di dalam pembinaan rumah itu. Juga dihujahkan bahawa pada 19 Disember 1955, perayu sebagai pemindah telah mengikat perjanjian dengan Zainab sebagai penerima pindahan dan DW2 sebagai pembeli. Pada masa yang penting itu, rumah itu tertakluk kepada suatu waran penahanan di mana perayu diperintahkan supaya membayar kepada Lee Hock Seng wang berjumlah RM3,686.70 dan untuk mengelakkan waran itu, kedua-dua perayu dan Zainab telah meminta pertolongan DW2 yang telah membayar RM4,250 untuk menyelesaikan jumlah yang terhutang itu. Jumlah RM4,250 itu adalah dalam bentuk pinjaman dan sebagai balasan, perayu dan Zainab telah bersetuju memindah milik rumah itu kepada DW2 dan membayar

sewa sebanyak RM60 sebulan. Sewa itu telah dibayar oleh Zainab atau penentang manakala perayu, kerana sedang menganggur, tidak pernah membayar sewa itu. Juga dihujahkan bahawa Zainab dan penentang selesai membayar balik pinjaman itu dalam tempoh dua tahun dan dalam tahun 1957, rumah itu telah diserahkan kepada Zainab melalui suatu perjanjian.

Penentang dan keluarganya telah tinggal di dalam rumah itu hingga kini dan semasa beliau tinggal di rumah itu, penentang telah membayar sewa dan bil elektrik. Pada 13 April 1987, perayu telah menyampaikan suatu notis untuk milikan kosong terhadap penentang. Mahkamah majistret telah menolak tuntutan perayu terhadap penentang untuk menghantar serahkan milikan kosong rumah itu bersama dengan gantirugi untuk pencerobohan. Perayu telah membuat rayuan. Apabila rayuan didengar, mahkamah mempertimbangkan dua isu utama:

(a) sama ada notis keluar dan untuk menghantar serah milikan kosong yang bertarikh 13 April 1987 itu adalah tidak sah dari segi undang-undang dan oleh itu tidak berkesan untuk menamatkan tenansi penentang; dan
(b) sama ada di dalam keadaan kes ini tenansi penentang disamakan dengan equiti yang tidak boleh ditamatkan dengan hanya suatu notis keluar dan untuk menghantar serah milikan kosong.

Diputuskan, menolak rayuan itu:

(1) Tidak terdapat tenansi yang sah di antara perayu dan penentang. Oleh itu tidak mungkin terdapat tenansi yang berterusan seperti yang dibayangkan di dalam s 116 Akta Keterangan 1950. Oleh yang demikian penentang dengan sewajarnya mencabar kedudukan perayu dan penentang tidak boleh dianggap diestop daripada menafikan bahawa hakmilik perayu sebagai tuanrumah telah berakhir. Dengan itu, notis keluar adalah tidak sah dari segi undang-undang dan perayu tidak berhak mengusir penentang dari rumah itu.
(2) Sebagai alternatif, bayaran sewa oleh penentang jelas menunjukkan bahawa penentang menpunyai suatu tenansi di atas tanah di mana rumah itu dibina. Oleh itu terdapat perbelanjaan wang oleh penentang untuk menghalang rumah itu daripada dilelong oleh Lee Hock Seng. Oleh itu penentang mestilah menjangka bahawa beliau akan dibenarkan tinggal di rumah itu dan equiti akan menolongnya.

Per curiam:

Apabila terdapat versi yang bertentangan secara langsung, dan penerimaan atau penolakannya nyata sekali bergantung kepada testimoni lisan protagonis, peranan mahkamah rayuan adalah jelas, iaitu, mahkamah rayuan mestilah memberi penuh kehormatan kepada keputusan fakta mahkamah perbicaraan itu dan tidak patut mengganggunya kecuali jika ia berpuas hati bahawa mahkamah perbicaraan telah mencapai keputusan yang salah.]

Cases referred to

1 *Hirabai* (1955) AIR Nagpur 234 (refd)
2 *Bhaiganti Bewa v Himmat* (1917) AIR Cal 498 (refd)
3 *Mt Bilas Kunwar v Desraj Ranjit Singh* (1915) AIR PC 96 (refd)
4 *Annamalai Chettiar* (1970) AIR 57 Mad (refd)
5 *Singma Sawmill Co Sdn Bhd v Asian Holdings (Industrialised Buildings) Sdn Bhd* [1980] 1 MLJ 21 (folld)
6 *Wee Tiang Yap v Chan Chan Brothers* [1986] 1 MLJ 47 (folld)
7 *Fatimah v Moideen Kutty* [1969] 1 MLJ 72 (folld)
8 *Ramsden v Dyson* (1866–67) LR 1 HL 129 (refd)
9 *Inwards & Ors v Baker* [1965] 1 All ER 446 (refd)
10 *Teo Ai Choo v Leong Sze Hian* [1986] 2 MLJ 331 (refd)
11 *Powell and wife v Streatham Manor Nursing Home* [1935] AC 243 (refd)
12 *Tan Tek Yan v Samuel* [1964] MLJ 283 (refd)

Legislation referred to

Evidence Act 1950 s 116

V Muthusamy (*V Muthusamy & Co*) for the appellant.
Anne Goh (*Chen Leong & Co*) for the respondent.

Abdul Malik Ishak JC: The appellant/plaintiff sued the respondent/defendant in the Magistrate's Court, Parit Buntar for delivery of vacant possession of an unnumbered house erected on lot 1395, Simpang Tiga, Parit Buntar, Kerian, Perak ('the said land') together with damages for trespass. The learned magistrate who heard the case gave judgment in favour of the respondent. The appellant being dissatisfied appealed against the whole decision of the learned magistrate.

The facts of the case are as follows. According to the appellant, in 1954 he built with the consent of Pakriasamy a/l Thendayuthepane (PW2) ('the land owner') an unnumbered house on the said land after the relevant plan had been signed by the landowner and approved by the Kerian Town Board (see exh P1). A certificate of fitness for occupation of the unnumbered house was issued to the appellant by the chairman of the Kerian Town Board wherein it was certified that the building was fit for occupation with effect from 14 February 1955 (see exh P2). It was alleged that the appellant rented the said land from the land owner and paid him ground rent of RM3 per month. Thereafter the appellant/ plaintiff stayed with his family in the unnumbered house for a period of 12 years. In 1965, the appellant and his family moved to Penang and the unnumbered house was occupied by his in-laws, who then took charge of the affairs of the unnumbered house. According to the appellant, in 1974 on invitation of his in-laws the respondent stayed temporarily in the unnumbered house with her husband and children while waiting for their house (respondent's) in Kuala Lumpur to be ready. At that time the appellant did not object. Upon the death of his in-laws, the respondent continued to stay in the unnumbered house till today.

On the other hand the respondent stated that she stayed in the unnumbered house when it was first built together with her husband, her two children and with both of her parents. And that the appellant and his wife (PW3) stayed in the unnumbered house since their marriage until the unnumbered house was almost auctioned off (this was due to the indebtedness of the appellant). She stated that she located the said land belonging to the landowner before the unnumbered house was built by the appellant and her mother, Zainab bte Hj Abdul Rahman ('Zainab'). And that the appellant and Zainab shared equally in building the unnumbered house.

It is pertinent to point out that the parties are related to one another. The appellant is the brother-in-law of the respondent.

It transpired that on 19 December 1955 the appellant as transferor entered into an agreement (exh D5) with Zainab as transferee (the mother-in-law of the appellant and the maternal mother of both the respondent and (PW3)) and with S Syed Ahamed s/o Shaik Mohamed ('DW2') as purchaser of the unnumbered house. By virtue of this agreement the appellant transferred the unnumbered house on 16 September 1955 to Zainab. Since the unnumbered house was subject to a warrant of attachment vide Ipoh Civil Suit No 100 of 1955 wherein the appellant was ordered to pay Lee Hock Seng the sum of RM3,686.70 and in order to overcome this problem both the appellant and Zainab being desirous of avoiding the warrant of attachment sought the help of DW2 to settle the debt to Lee Hock Seng. DW2 settled the debt to Lee Hock Seng by forwarding a sum of RM4,250 to a Chinese lawyer in Taiping. This was in the form of a loan. In return both the appellant and Zainab agreed to transfer the unnumbered house to DW2 and to pay a rent of RM60 to DW2. According to DW2, Zainab, the appellant and his wife together with the respondent stayed in the unnumbered house. The rent of RM60 was paid by Zainab or the respondent. The appellant never paid the rent since he was unemployed. The loan was totally repaid by Zainab and the respondent on instalments over a period of two years. According to DW2 after the loan had been repaid in 1957, the unnumbered house was surrendered to Zainab by way of an agreement. Unfortunately the agreement was missing.

Later Zainab and her husband died (the date unknown as no evidence was led in the magistrate's court). The unnumbered house was occupied by the respondent and her family till today. During the duration of the respondent's stay (together with her husband and children) at the unnumbered house, the ground rents were paid by her (respondent) (see receipts dated 30 November 1976 (two copies), 5 April 1977, 30 May 1978 (two copies), 5 March 1979, 13 February 1980 (two copies), 24 October 1981 and 31 July 1980 (two copies) — exhs D6A–K). The electricity bill (exh D7) in the name of the respondent was also paid by her (respondent).

The appellant through his solicitors by letter dated 13 April 1987 served a notice for vacant possession of the unnumbered house to the respondent (see exh P3). By this notice the respondent who was described as a licensee was alleged to have failed to pay house rent and was required to vacate by 31 May 1987. The respondent admitted receiving the said notice.

There are two major issues in this appeal. Firstly, whether the notice to quit and to deliver vacant possession as per exh P3 dated 13 April 1987 was bad in law and therefore it had no effect to terminate the respondent's tenancy. Secondly, whether in the circumstances of this case the respondent's tenancy was coupled with an equity which could not be determined by a bare notice to quit and to deliver vacant possession.

In regard to the first issue, counsel for the appellant contended that the notice to quit (exh P3) was good in law as the unnumbered house was owned and built by the appellant. In rebuttal, counsel for the respondent contended that the notice to quit was bad in law in that the appellant was no longer the owner of the unnumbered house and therefore not entitled to evict the respondent. For convenience the notice to quit is reproduced below:

VM/PB/LT/61/84

13 April 1987

Berdaftar AR

Rosimah Begum bte Bahadur Beg,
Rumah di atas Lot No 1395
Section Simpang Tiga
34200 Parit Buntar
Perak.

Notis Pindah
Re: Rumah di atas Lot No 1395 Section Simpang Tiga, Parit Buntar, Perak.

Kami mewakili Encik Rosman alias Osman bin Haji Abdul Rashid, tuanpunya rumah yang tersebut di atas di mana rumah tersebut tidak tertakluk di bawah Ordinan Pengawal Sewaan 1966.

Kami diarah untuk memberi notis pindah dan mengosongkan rumah yang dibina oleh puan sebagai licensee tanpa bayaran sewa rumah kepada pelanggan kami pada 31 Mei 1987.

Sila ambil perhatian jikalau puan gagal dan enggan mematuhi notis ini dalam jangka masa yang diberikan maka kami mendapat arahan daripada pelanggan kami untuk mengambil tindakan mahkamah untuk menghalau puan dari rumah tersebut di atas tanpa rujukan puan lagi.

Tarikh 13 April 1987
tt
Peguambela & Peguamcara

sk Encik Rosman alias Osman bin Haji Abdul Rashid
d/a Cik Laila bte Bahadur Beg
2K Jalan Sungai Nibong
11900 Bayan Lepas
Pulau Pinang.

It is not in dispute that the landowner of the said land (at the material time) wherein the unnumbered house was built was Pakriasamy a/l Thendayuthepane (PW2). The landowner owned the said land from 1954 till October 1981 when it was sold to a developer. It is said that the appellant built the unnumbered house after obtaining the relevant approval from the chairman of the Kerian Town Board and paid ground rent at RM3

to the landowner per month. But the notice to quit describes the respondent as the person who built the unnumbered house and held it as a licensee ('rumah yang dibina oleh puan sebagai licensee'). It is also not in dispute that the appellant fell into financial difficulty (it was said by the appellant's wife (PW3) that the cost of building the unnumbered house had caused hardship to her husband) and consequently Lee Hock Seng instituted a warrant of attachment of movable property in order to recover RM3,686.70 vide Ipoh Civil Suit No 100 of 1955. Being alarmed at this turn of event, an agreement dated 19 December 1955 (exh D5) was entered into between three parties. By this agreement (exh D5) the unnumbered house was transferred to Zainab and DW2 became the purchaser of the unnumbered house for the sum of RM4,250. Since the sum of RM4,250 was repaid to DW2 by Zainab and the respondent on instalment basis for a period of two years and the ground rents were also paid by the respondent (see exhs D6A–K), it was submitted (by the learned counsel for the respondent) that the notice to quit was bad in law. By 19 December 1955 the ownership of the unnumbered house had changed hands. It was no longer with the appellant. Therefore the appellant was not entitled to evict the respondent.

It was contended by the learned counsel for the appellant that the respondent as tenant was estopped by s 116 of the Evidence Act 1950 from denying her landlord's title (in this case the landlord being the appellant).

Section 116 Evidence Act 1950 reads thus:

> No tenant of immovable property ... shall during the continuance of the tenancy be permitted to deny that the landlord .... had at the beginning of the tenancy a title to the immovable property;...

In *Hirabai*,[1] the question posed for decision was whether a tenant could deny the title of his landlord after the termination of the tenancy. The court in delivering its judgment quoted with approval the following passage by Mooker J in *Bhaiganti Bewa v Himmat*:[2]

> Enjoyment by permission is the foundation of the rule that a tenant shall not be permitted to dispute the title of his landlord. Two conditions then are essential to the existence of the estoppel, first, possession, secondly permission; and when these conditions are present, the estoppel arises, and the estoppel prevails so long as such possession continues.

Again the court in delivering its judgment referred to a decision of the Privy Council in *Mt Bilas Kunwar v Desraj Ranjit Singh*[3] and said:

> In [that case], the suit was brought for possession by a landlord against the tenant who refused to deliver possession after a notice to quit. Their Lordships observed: '... a tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord. ... The fact that in the present case the tenancy came to an end by reason of forfeiture and the landlord served a notice asking the tenants to vacate the house did not make any difference to the applicability of the rule of estoppel which is grounded on the tenant being still on the premises which he had obtained from the landlord. The estoppel continues so long as the tenant does not surrender possession to the landlord.

Thus the court in *Hirabai*[1] held that a tenant could not deny the title of his landlord after the termination of the tenancy for so long as the tenant remained in possession.

Next is *Annamalai Chettiar*,[4] where it was stated that:

> Section 116 of the Evidence Act clearly says that the tenant is estopped from denying, during the continuation of the tenancy, that the landlord had title at the commencement of the tenancy. Possession and permission being established, estoppel would bind the tenant during the continuation of tenancy and until he surrenders his possession ... . The estoppel contemplated by s 116 of the Indian Act is, as I have observed, restricted to the denial of title at the commencement of the tenancy and by implication, it follows that a tenant is not estopped from contending that the landlord had no title before the tenancy commenced or that the title of the lessor has since come to an end.

Nearer home is the case of *Singma Sawmill Co Sdn Bhd v Asian Holdings (Industrialised Buildings) Sdn Bhd*[5] where Raja Azlan Shah Ag CJ (Malaya) (as his Majesty then was) said [at p 24]:

> Now s 116 of the Evidence Act enacts that no tenant of immovable property shall, during the continuance of the tenancy be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property. The words 'during the continuance of the tenancy' are important and make it clear that where there is no legal tenancy, the provisions of the section are not applicable. That being so, where the contract of tenancy has come to an end by effluxion of time, there is no legal contract of tenancy and therefore there can be no question of the continuance of such tenancy. The tenant in consequence can later challenge the status of the landlord, and he cannot be deemed to be estopped from denying that the title of the landlord has come to an end. We are of the view that the decision in *Ban Seng v Yap Pek Soo* [1967] 2 MLJ 156 is now no longer good law.

In *Wee Tiang Yap v Chan Chan Brothers*,[6] Hashim Yeop Sani FJ (as he then was) in a supporting judgment said [at p 51]:

> A tenant cannot deny that the person by whom he is let into possession had title at that time; but he may shew that subsequently such title is determined by transfer or otherwise. This rule which has been well established in many English cases was adopted by this court in *Fatimah v Moideen Kutty* [1969] 1 MLJ 72.

In *Fatimah v Moideen Kutty*,[7] it was held that notwithstanding the doctrine of estoppel a tenant may plead that the title of the landlord has come to an end.

It must be borne in mind that the relationship of landlord and tenant can be created only by a contract, valid and legal according to the law subsisting at the time of its execution. The question to be considered in the instant appeal is this: what was the relationship of the appellant and the respondent after 19 December 1955? From the available evidence the ownership of the unnumbered house has changed hands — from the appellant (I wholeheartedly agree with the learned magistrate that the unnumbered house was built and owned before 19 December 1955 by the appellant) to the transferee (Zainab) and then to the purchaser, DW2. The latter allowed

the respondent to stay at the unnumbered house with her parents on payment of RM60 per month as rental and it was in evidence that the RM4,250 advanced by DW2 to settle the debt of the appellant to Lee Hock Seng was repaid by Zainab and the respondent. There was no legal tenancy between the appellant and the respondent. Therefore there can never be any question of the continuance of the tenancy as envisaged in s 116 of the Evidence Act 1950. Consequently, the respondent rightly challenged the status of the appellant and he (respondent) cannot be deemed to be estopped from denying that the title of the landlord (appellant) has ended. In that event, the notice to evict was bad in law and the appellant was not entitled to evict the respondent from the unnumbered house.

Even if I am wrong in that the notice to evict was good in law, there is another hurdle to overcome and that is: whether there was a tenancy coupled with equity vested in the respondent? The principle of equity or what is sometimes referred to as equitable estoppel was succinctly stated by Lord Kingsdown in *Ramsden v Dyson*,[8] in particular at p 170:

> The rule of law applicable to the case appears to me to be this: If a man, under verbal agreement with a landlord for a certain interest in land, or, what amounts to the same thing, under an expectation, created or encouraged by the landlord, that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord, and without objection by him, lays out money upon the land, a court of equity will compel the landlord to give effect to such promise or expectation. This was the principle of the decision in *Gregory v Mighell* 34 ER Chancery 341 and, as I conceive, is open to no doubt.

Lord Denning MR further explained and refined the principle of equitable estoppel in *Inwards & Ors v Baker*[9] in particular at pp 448–449:

> ... in this case, even though there is no binding contract to grant any particular interest to the licensee, nevertheless the court can look at the circumstances and see whether there is an equity arising out of the expenditure of money. All that is necessary is that the licensee should, at the request or with the encouragement of the landlord, have spent the money in the expectation of being allowed to stay there. If so, the court will not allow that expectation to be defeated where it would be inequitable so to do.

Reverting to the instant appeal, I have to examine the circumstances in order to see whether the respondent had acquired a tenancy coupled with equity. The notice to quit referred to earlier describes the respondent as a licensee. The fact that there was no written agreement between the appellant and the respondent is immaterial. Payment of ground rent by the respondent as per exhs D6A–K is a clear indication that the respondent had a tenancy of the said land upon which the unnumbered house was built. No doubt the unnumbered house was built at the material time by the appellant, yet by virtue of the agreement as per exh D5 dated 19th December 1955 a new complexion was added, in that both Zainab and the respondent paid the loan advanced by DW2 in the sum of RM4,250 for two years on instalment basis and also paid RM60 rent to DW2 all with a view to help the appellant. There was therefore an expenditure of money by the respondent in order to prevent the unnumbered house from being auctioned by Lee Hock Seng.

Here it must be borne in mind that DW2 was categorical in saying that the appellant being unemployed did not pay him a cent. It would not be incorrect to say that the respondent must be under an expectation of being allowed to stay in the unnumbered house. Thus equity would therefore come in aid of the respondent.

In the court below, there were to some extent conflicting evidence. The appellant stated:

(1) that he occupied the unnumbered house since it was built in 1954 continuously for 12 years with his wife and children and his parents-in-law. Thereafter he went on transfer to Penang. The unnumbered house was occupied by his parents-in-law who in 1974 allowed the respondent to stay in the unnumbered house after her (respondent's) husband had retired. In contrast the respondent stated that she occupied the unnumbered house from the time it was built;

(2) that he repaid DW2 one lump sum the amount advanced to Lee Hock Seng in order to settle the warrant of attachment vide Ipoh Civil Suit No 100 of 1955. However, DW2 denied this totally and corroborated the evidence of the respondent that the latter was the one together with her mother (Zainab) who repaid the loan on instalment basis for a period of two years and they also paid the monthly rentals of RM60 to DW2. DW2 also stated that the appellant did not pay a cent; and

(3) that he paid the ground rent to the landowner. In contrast, under cross-examination the landowner made a startling statement that it was Zainab that paid the ground rent till 1981.

Now it has been said time and again, that where there were directly contradictory versions the acceptance or rejection of which significantly depended on the oral testimony of the protagonists, the role of the appellate court is clear, that is, the appellate court has to accord to the findings of fact of the trial court the greatest respect and ought not to disturb them unless it is satisfied that the trial court had reached a wrong decision. (See *Teo Ai Choo v Leong Sze Hian.*[10]) Having seen and heard the witnesses, the learned magistrate in the court below made a specific finding of fact, viz:

> Berdasarkan keterangan yang telah dikemukakan oleh kedua-dua pihak semasa perbicaraan, mahkamah mendapati bahawa plaintif [appellant] bukanlah pemilik sebenar ke atas premis yang dipertikaikan.

There are established principles which an appellate court should follow in reviewing the findings of the trial magistrate. Lord Wright in the case of *Powell and wife v Streatham Manor Nursing Home*[11] said [at p 265]:

> Two principles are beyond controversy. First, it is clear that in an appeal of this character, that is from the decision of a trial judge based on his opinion of the trustworthiness of witnesses whom he has seen, the Court of Appeal 'must in order to reverse, not merely entertain doubts whether the decision below is right, but be convinced that it is wrong'. ... And secondly, the Court of Appeal has no right to ignore what facts the judge has found on his impression of the credibility of the witnesses and proceed to try the case on paper on its own view of the probablities as if there had been no oral hearing.

In *Tan Tek Yan v Samuel*[12] Wee Chong Jin CJ said:

> It has been laid down on numerous occasions that an appellate court even though it is disposed to come to a different conclusion on the printed evidence will not upset the finding of a trial judge on a question of fact which turned solely on the credibility of witnesses, unless it is satisfied that the trial judge was plainly wrong.

Applying the aforesaid principles to the instant appeal, I am not satisfied that the trial magistrate was plainly wrong in coming to the conclusions as he did on the evidence before him. The appeal is hereby dismissed. However, having regard to the circumstances of this case, I order that each party pay his/her own costs here and in the court below.

Order accordingly.

Reported by Yap Foo Ken